

DIVISION OF LICENSING & ENFORCEMENT

TO: Dennis Keschl, AQC Bureau Director
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AQC Licensing Staff
Sarah Roberts Walton, AAG
FROM: Mike Mendel, Kevin Macdonald, and Marc Cone
DATE: 2/22/93
RE: Guidance for determining Owner - Tenant Responsibilities for Air Emission
Licenses

This memorandum sets forth a guideline that can be used to identify owner(s) or their agents and assignees ("owner") and/or individual tenant responsibilities for air emission licenses in multiple tenant properties. This guideline has been reviewed and commented on by the Agency's Reviewers, Attorney General's Office and the Licensing Staff. Many unanticipated factors may affect the determination of licensing responsibilities and these will have to be dealt with as they become apparent. Decisions on who is required to have an air emission license will always be done in a way that best protects public health and the environment. The Attorney General's Office anticipates there may actually be occasions when both the tenant(s) and the owner may be responsible for the licensing of the same pollution-emitting activity.

Owner responsibility

1. The pollution-emitting activities of the individual tenants can generally be classified as belonging to the same industrial grouping and/or share a common purpose. The tenants should be considered a single facility. The owner of the property bears the responsibility for obtaining and complying with an air emission license.

Example:

Municipal Airport

Establishments primarily engaged in the operation and maintenance of airports and flying fields and/or the servicing, repairing (except on a factory basis), and storing of aircraft at such airports are considered as belonging to the same

Standard Industrial Classification Code (4582) according to the SIC Manual 1972. These tenants as a single facility fail to meet licensing exemptions (Chap. 115. II. (C)). The tenants, therefore, should be licensed as a single facility with the municipality bearing the responsibility for obtaining and complying with a license.

2. The pollution-emitting activities are long-term in that they are likely to remain as part of the property regardless of the individual tenant. The owner of the property bears the responsibility of obtaining and complying with a license for the long-term pollution-emitting activities.

Examples

Multiple tenant industrial building with long-term pollution-emitting equipment

Three 5.2 MM Btu/hr boilers occupied the building before any of the current tenants leased space in the multiple tenant building. One manufacturer operates one of the boilers to produce steam to drive its manufacturing processes. The other tenants use one of the other boilers for heating their premises. The third boiler can act as a backup for the other two boilers. All three boilers are part of the property regardless of the individual tenants and therefore the owner would be responsible for obtaining an air emission license for the boilers because they exceed the 10 MM Btu/hr exemption.

Shopping mall incinerator

An incinerator that requires licensing is located in the shopping mall. The incinerator is considered likely to remain regardless of which tenants occupy the building. The owner of the shopping mall is responsible for obtaining a license for its use.

Individual tenant responsibility

1. The tenants occupying a property are of different industrial groupings and the tenants do not share a common purpose. The tenants' pollution-emitting activities are transient in that they come and go with each individual tenant. The licensing of the transient pollution-emitting activities of each tenant will be considered independently of other tenants and any long-term activities that are the responsibility of the owner.
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Multiple tenant building with transient pollution-emitting activities

One tenant manufactures synthetic rubber and one tenant is engaged in fabricating ferrous and nonferrous metal products. The pollution-emitting activities of the individual tenants can not be generally classified as belonging to the same industrial grouping and the tenants do not share a common purpose. The pollution-emitting activities of each tenant will be considered independently. The metal products manufacturer emits more than 100 lbs/day of a regulated pollutant from its processes. The synthetic rubber manufacturer emits from its processes less than 100 lbs/day and 10 lbs/hr for all regulated pollutants. In addition, the synthetic rubber manufacturer does not exceed any of the exemptions listed in Chap. 115. II (C) or any standards for hazardous air pollutants. In this example, the metal products manufacturer will require a license, but the rubber manufacturer will not.

It is important to note that under the present guidelines, if both of the above manufacturers independently were below 100 lbs/day and 10 lbs/hr for a given regulated pollutant, but combined were above 100 lbs/day or 10 lbs/hr, neither would need a license. This situation, however, may fall under the "other factors" category mentioned in the introduction. The Department would deal with these situations on a case by case basis and in such a way that would be protective of public health and the environment.

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